IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5176 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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A.R.TEXTILES THRO' PARTNER A.Y.WAGHBAKRIWALA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5176 of 2002

MR PR NANAVATI for Petitioner No. 1

MR DN PATEL for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 06/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr.D.N.Patel, Ld. Senior Standing Counsel for the Central Government waives service of rule for he respondents.

2. This petition under Article 226 of the Constitution of India challenges the order dated 11.4.2002 passed by CEGAT, Mumbai in Stay Application in the petitioner's appeal against the order of the Commissioner of Customs and Central Excise, Surat dated 27.2.2001 requiring the petitioners to deposit Rs. 913115/- by way of excise duty and equal amount of penalty on petitioner no.1 and penalty of Rs.1,25,000/on its partner. By the impugned order, the CEGAT has directed the petitioner to pre-deposit Rs.2 lacs within a period of 8 weeks on the ground that in other cases covered by the common order of the Commissioner of Central Excise and Customs, the assessee has been put to terms by directing pre-deposit of approximately 25% of the duty amount confirmed on yarn alleged to have been clandestinely removed by the petitioners and therefore, the same pattern was followed in the petitioner's case also. Upon a pre-deposit of Rs.2 lacs, there would be waiver of recovery of the balance amount of duty and also the entire amount of penalty on the firm as well as its partner.

3. Mr.P.R.Nanavaty, Ld. Counsel for the petitioner has submitted that the petitioner's case has been erroneously equated with the case of M/s. Shivam Exports and M/s. Suvidha Polyster Limited. According to the petitioner, the stock was seized from the said units which was alleged to be purchased from open market without paying excise duty. The petitioner had also supplied grey fabrics to M/s. Shivam Exports and the petitioner had also supplied AR 3 form for the goods supplied by it to M/s. Shivam Exports. It is submitted that merely because the Department had launched cases against all the three units and passed a common order, CEGAT was not exonerated from the requirement to consider the facts of each individual applicant. Reliance has also been placed on the decision of the Calcutta High Court reported in 1991 (53) Excise Law Times Page 543 holding that while passing the orders on the stay application and considering the question of pre-deposit, the Tribunal is also required to consider the question of prima facie case of the appellant apart from the question of economic hardship.

4. Mr.D.N.Patel, Ld. Senior Standing Counsel for the respondents submits that the petitioner is required

to deposit only 25% of the duty amount and no amount towards penalty and the impugned order does not call for any interference.

5. Having heard the Learned Counsel for the parties, it appears to us that the Tribunal has applied the same formula and has directed pre-deposit of approximately 25% of the duty amount in case of the other parties involved and the Tribunal has followed the same pattern in the case of the present petitioner by directing pre-deposit of Rs.2 lacs, simply because all the matters arise out of the common order passed by the Commissioner of Central Excise and Customs, Surat. It appears that the petitioner's case that they stand on a different footing from M/s. Shivam Exports and M/s. Suvidha Polyster Ltd. has not been considered by the Tribunal. It would, therefore, be in the interest of justice if the petitioners bring their facts to the notice of the Tribunal by filing Misc Civil Application for this purpose.

6. In view of the above discussion, this petition is disposed of with a direction that if the petitioners file, within two weeks from today, a Misc. Civil Application before the CEGAT, Mumbai pointing out its case that it stands on a different footing from M/s. Shivam Exports and M/s. Suvidha Polyster Ltd, the Tribunal shall hear and decide the same as expeditiously as possible and preferably within two months from the date of filing of the application. Till then, the Tribunal shall not pass any further orders on the basis of the impugned order dated 4.4.2002 at Annexure A to this petition.

7. This petition is accordingly disposed of in terms of the aforesaid directions with no order as to costs. Rule is discharged.

(M.S.Shah, J) (K.A.Puj, J)
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